

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**JAMES MATHES**  
Marion County, Iowa

ADMINISTRATIVE CONSENT ORDER  
NO. 2010-AFO-35

TO: James Mathes  
54715 290<sup>th</sup> Avenue  
Chariton, Iowa 50049

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and James Mathes for the purpose of resolving violations relating to an animal feeding operation previously owned and operated by James Mathes. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Jeff Theobald, Field Office 5  
Iowa Department of Natural Resources  
401SW 7<sup>th</sup> Street, Suite 1  
Des Moines, Iowa 50309  
Phone: 515/725-0268

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175 (1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459, Subchapter III and the rules adopted or permits issued pursuant thereto and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JAMES MATHES

**III. STATEMENT OF FACTS**

1. James Mathes owned and operated an animal feeding confinement operation located at 1254 Webster Street; Knoxville, Iowa ( NW ¼ of SE ¼ of Section 36, Washington Township, Marion County). Manure from the operation was stored in two unformed manure storage basins located east of the confinement building. The first basin measured 130' x 97' x 103' (approximately 0.22 surface acres) and the second basin measured 184' x 144' x 1127' (approximately 0.35 surface acres). Mr. Mathes owned and operated the facility since the late 1980s or early 1990s and last had hogs in the confinement buildings in 2002. The facility is currently being purchased under contract by Donald Storm. The buildings are in the process of being torn down and salvaged out.

2. On March 9, 2010, DNR Field Office 5 received a complaint from the Marion County Environmental Health Department. The Marion County road crew stated that manure basins were being drained from Mr. Mathes' facility. The complaint further stated that the berms were broken open using an excavator and the flow from the basins washed out a county road below the basins. There is an unnamed tributary to Hickory Creek near the basins.

3. On March 9, 2010, Jeff Theobald, DNR Field Office 5 Environmental Specialist, contacted Mr. Mathes to discuss the situation. Mr. Mathes stated that he had opened up the two basins by removing the berms the previous week. Mr. Theobald required Mr. Mathes to replace the berms to prevent the remaining manure from being released.

4. On March 10, 2010, Mr. Theobald met with Mr. Mathes at the facility. Mr. Mathes had replaced the basin berms and both basins appeared to be ¼ full. Mr. Mathes explained that he was selling the facility and as part of the sales agreement he agreed to remove the manure from the basins. He further stated he was going to remove the manure the previous fall, but because of the weather he was unable to do so. He was unable to apply the manure to land at this time because the land owners did not want the equipment on the field; therefore he opened up the west basin that drained to the east basin and then opened up the east basin. The manure flowed from the basin along a terrace to a drain tile intake. The tile intake drained to a ditch along Webster Street and then to an unnamed tributary of Hickory Creek. Mr. Theobald collected laboratory samples from each of the basins. The waste-water in the east basin had an ammonia concentration of 1.4 mg/L, a biological oxygen demand (BOD) concentration of 6 mg/L, and a total kjeldahl nitrogen concentration of 2.5 mg/L. The waste-water in the west basin had an ammonia concentration of 8.1 mg/L, a BOD concentration of 10 mg/L, and a total kjeldahl nitrogen concentration of 8.7 mg/L. Mr. Theobald conducted ammonia field tests at the tile inlet of the terrace and the tile outlet, which were 0.72 ppm, and .048 ppm. Mr. Theobald also checked locations downstream for any signs of impact to the tributary and creek. There were no signs of further impact. The water levels were fairly high, as was the flow due to the snow melt and recent rainfall.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JAMES MATHES

5. On March 22, 2010, DNR issued a Notice of Violation letter to Mr. Mathes for the violations discovered during Mr. Theobald's investigation. The letter included the following violations: failure to close a manure storage basin and failure to maintain the minimum level of manure control for a confinement operation. The letter required that the manure be properly removed and the basins properly closed by May 31, 2010.

6. On April 6, 2010, Mr. Mathes contacted Mr. Theobald and stated that the manure had been removed and the basins were properly closed. On May 6, 2010, Mr. Theobald visited the facility and verified that the manure had been removed and appeared to be land applied to a nearby field.

7. Mr. Mathes has prior knowledge of the requirements for proper basin closures in that he had been hired in the past to close basins at other facilities.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. Iowa Code section 459.311 and 567 IAC 65.2(8) state as soon as practical, but no later than six months after the use of an animal feeding operation is discontinued, all manure shall be removed from the discontinued animal feeding operation and its manure control facilities and be land applied. There have not been pigs at Mr. Mathes' facility since at least 2002. Mr. Mathes owned the facility at the time it was discontinued and is liable for the manure removal. The manure was not removed from the facility until 2010 - eight years after the facility operations had been discontinued. The above-facts disclose a violation of this provision.

3. 567 IAC 65.3(2) states the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. By intentionally removing the berms of the manure storage basins, Mr. Mathes failed to retain all the manure. The above-facts disclose a violation of this provision.

**V. ORDER**

THEREFORE, the DNR orders and James Mathes agrees to do the following:

1. James Mathes shall pay an administrative penalty of \$4,500.00 in accordance with the following payment schedule. If any of the payments are not paid in accordance with the payment schedule, the remaining penalty shall be due immediately:

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JAMES MATHES

\$187.50 due August 15, 2010;	\$187.50 due August 15, 2011;
\$187.50 due September 15, 2010;	\$187.50 due September 15, 2011;
\$187.50 due October 15, 2010;	\$187.50 due October 15, 2011;
\$187.50 due November 15, 2010;	\$187.50 due November 15, 2011;
\$187.50 due December 15, 2010;	\$187.50 due December 15, 2011;
\$187.50 due January 15, 2011;	\$187.50 due January 15, 2012;
\$187.50 due February 15, 2011;	\$187.50 due February 15, 2012;
\$187.50 due March 15, 2011;	\$187.50 due March 15, 2012;
\$187.50 due April 15, 2011;	\$187.50 due April 15, 2012;
\$187.50 due May 15, 2011;	\$187.50 due May 15, 2012;
\$187.50 due June 15, 2011;	\$187.50 due June 15, 2012;
\$187.50 due July 15, 2011;	\$187.50 due July 15, 2012;

**VI. PENALTY**

1. Iowa Code sections 459.603 and 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$4,500.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Mathes saved time and money by not properly removing and land applying the manure from the facility after discontinuation of the operation. Mr. Mathes was able to delay the removal and land application costs for a period of eight years. Additionally, Mr. Mathes saved time and money when he did remove the manure from the basins. Rather than land applying the manure, Mr. Mathes removed the berms from the basins and allowed  $\frac{3}{4}$  of the manure of the basins to discharge over land and to a tile intake. Even though Mr. Mathes did eventually properly remove the remaining quarter of the manure from the basins, he was able to avoid the removal and application costs for  $\frac{3}{4}$  of the manure from the basins. A conservative estimate of the costs delayed and avoided by Mr. Mathes is \$3,000.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JAMES MATHES

the matter. By failing to properly remove all the manure from the lagoon and removing portions of the lagoon berms Mr. Mathes created a potential threat to the environment. Failure to properly close the lagoon undermines the integrity of the animal feeding program. Based on the above considerations, \$750.00 is assessed for this factor.


Culpability – Mr. Mathes has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Mathes has been hired to close other basins in the area and is well aware of the requirements. Therefore, \$750.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of James Mathes. For that reason James Mathes waives the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 23 day of  
June, 2010.

  
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JAMES MATHES

Dated this 14<sup>th</sup> day of  
June, 2010.

Kelli Book; DNR Field Office 5; EPA; VIII.D.1.a, VIII.D.2.c